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NHTSA-01-8677-533

November 22,2002

VIA HAND DELIVERY

EXPEDITED HANDLING REQUESTED

Jeffrey W. Runge, Administrator
National Highway Traffic Safety Administration
400 7th Street, S.W.
Washington, DC 20590

Re: Petition of National Association of Trailer Manufacturers for Postponement of Compliance Date, Early Warning Reporting Provisions of the TREAD Act, Docket No. NHTSA 2001-8677

Dear Mr. Runge:

Enclosed for filing are an original and 10 copies of the Petition of the National Association of Trailer Manufacturers For Postponement Of Compliance Date For Certain Trailers.

The National Association of Trailer Manufacturers is concerned about the impending compliance date, April 1, 2003, for the Early-Warning Reporting requirements of the final rule published in the *Federal Register* of July 10,2002. The confluence of this date and concomitant need for industry to expend substantial sums of money in order to comply gives NHTSA inadequate time to issue its decision disposing of the pending petitions for reconsideration seeking relief for manufacturers inappropriately classified as "large manufacturers" under the current rule. In the enclosed petition, NATM requests a delay of up to nine months for manufacturers of trailers with gross vehicle weight ratings of 26,000 lbs. or less to comply. Expedited handling of the tendered petition is respectfully requested.

In accordance with the *Federal Register* notice of July 10,2002, we are also furnishing one copy of the enclosed Petition for Postponement to Docket Management, Room PL-401, 400 7th Street, S.W., Washington, DC 20590.

Sincerely,

Kim D. Mann
General Counsel
National Association of Trailer Manufacturers

cc: NHTSA Docket Management (via hand delivery)
Taylor Vinson, Esquire, Office of Chief Counsel, NHTSA
Charles Maresca, Esquire, Office of Advocacy, SBA
Robert Schmitt, Esquire, Assistant General Counsel, RVIA
Ms. Pamela O'Toole, Executive Director, NATM
NATM Board of Directors
Mr. Jack Klepinger

Enclosure

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

DOCKET No. NHTSA 2001-8677

EARLY-WARNING REPORTING PROVISIONS OF TREAD ACT

PETITION OF THE NATIONAL ASSOCIATION OF TRAILER MANUFACTURERS FOR POSTPONEMENT OF COMPLIANCE DATE FOR CERTAIN TRAILERS

BACKGROUND

The National Association of Trailer Manufacturers ("NATM' or "Petitioner")[1/] petitions the National Highway Traffic Safety Administration ("NHTSA") to postpone for up to nine months the date that manufacturers of small-to-medium size trailers, 26,000 pounds GVWR and less, must comply with the early-warning reporting ("EWR") requirements of the TREAD Act. The current date for beginning to track and code accidents, claims, complaints, and field reports under the EWR is April 1, 2003. NATM requests this date be delayed, fixed as beginning the first calendar quarter that is nine months fi-om the date NHTSA publishes in the *Federal Register* notice of its decision disposing of the pending petitions for reconsideration challenging NHTSA's current definition of "large manufacturers."

Unless NHTSA takes prompt action to postpone the compliance date as requested, Petitioner's trailer-manufacturing members face a classic Hobson's choice: manufacturers must either immediately spend more than $225,000 each in order adequately to prepare themselves to comply with the EWR, facing the prospect that several months later they will learn that no such expenditure was required, or not expend the money necessary to comply, running the risk of

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1/ NATM represents 290 companies engaged in manufacturing small-to-medium size trailers, 26,000 lbs. GVWR and under, as well as companies supplying this segment of the trailer industry.

incurring civil fines of $5,000 or more per day for each day they fail to submit a complying EWR report.

On July 10, 2002, NHTSA published its "final" EWR rule, but invited petitions for reconsideration from the general public, due August 26, 2002. NATM submitted a timely petition for reconsideration and comments regarding the EWR rule and its impact upon the trailer industry. The principal focus of the NATM petition is a requested revision in the rule's demarcation between "large manufacturer" and "small manufacturer" as applied to the trailer industry.

To date NHTSA has not published anything in response to the NATM petition or the other petitions for reconsideration. Recent information, conveyed informally and off-the record by staff, suggests NHTSA will not be in a position to publish its decision disposing of the pending petitions for reconsideration, insofar as they address the size issue, until the end of this year, possibly not until early next year. This delay pushes NATM members into a comer with the current second-quarter 2003 compliance date looming only months away. The resulting dilemma this prepare-now-to-comply-later proposition poses for the trailer manufacturing industry is described below.

ARGUMENT

I. The Compliance Dilemma is Significant, The Repercussions Large.

NHTSA's final rule defines "large manufacturer" as any manufacturer that produces 500 or more motor vehicles a year. The EWR rule requires "large manufacturers," starting April 1, 2003, to track, compile, and then code vehicle accidents, claims, complaints, and field report data. NHTSA estimates each "large manufacturer" of trailers will have to spend more than $227,000 just to prepare itself to comply with these EWR rule requirements. These start-up

tasks include hiring and training personnel, reprogramming computers, developing software to code all data, and establishing systems capable of managing this undertaking, among other expenses.

Trailer manufacturers must begin investing in start-up equipment, personnel, and software now, if it is not already too late. Ms. Erika Jones, legal counsel to the Alliance of Automobile Manufacturers, forewarned a large audience of motor vehicle manufacturers attending an EWR Compliance Seminar on November 14, 2002, sponsored by RVIA and NTEA, that trailer manufacturers must begin to comply now. She aptly pointed out that data must be coded now; a retroactive reporting requirement requires current coding; and new, complex coding and tracking systems can not be set up and put into operation overnight. Ms. Jones also alerted the audience to the increased civil penalties under the TREAD Act -- $5,000 per day and up -- awaiting manufacturers failing to furnish the required EWR reports.

NHTSA's EWR and its definition of "large manufacturer" assume a significant discernable relationship between the number of vehicles a manufacturer produces and the risk these vehicles will become involved in serious accidents, either fatalities or personal injuries requiring hospitalization. But no such relationship has been shown to exist. In contrast, NATM presented information in its pending petition for reconsideration and supplemental petition establishing that small-to-medium size trailers and their uses differ materially from other vehicles (and their respective "road" experiences) that are the true targets of the EWR. Compared with "heavy" trucks, semi-trailers, automobiles, and buses, the small-to-medium trailer spends relatively little time on the open highway and is only very rarely involved in a serious accident resulting in a death or personal injury attributable to a manufacturing defect or design flaw. The accident-and-complaint data NATM's manufacturing members will have to

furnish NHTSA pursuant to its current EWR are, therefore, unlikely to be of any use to NHTSA in the fulfillment of its obligations under the TREAD Act.

Even NHTSA recognizes the compliance burden falling upon the segment of the trailer industry that NATM represents will be excessive, or at least out of proportion to any benefit NHTSA stands to gain from its EWR information, because of the overly-broad definition of "large manufacturer." The high cost of compliance and the *de minimis* value of the data NHTSA is likely to receive exacerbate this imbalance. To alleviate this undue burden, NATM petitioned NHTSA to reconsider its EWR definition of "large manufacturer," revising it to exclude virtually all manufacturers of small-to-medium size trailers from the "large-manufacturer'' reporting category. NATM asks NHTSA to re-assign all 26,000 lbs.-and-under GVWR trailer manufacturers to the "small-manufacturer" reporting category.' This form of "relief' would have the effect of lifting burdensome collection-and-reporting obligations from all or almost all of the small-to-medium size trailers industry and, in the process, relieving this industry of the necessity of spending upwards of $250,000 per company during the first year alone.

11. <u>Request for Interim Relief, Postponement, Is Reasonable, Prudent, and Justified</u>.

Petitioner respectfully requests NHTSA postpone the compliance date for all manufacturers of small-and-medium size trailers, delaying the quarter when they must first begin compiling the data required by 49 CFR $579.24. Petitioner asks that this compliance date be delayed until the first calendar quarter falling nine months fi-om the date the Agency publishes its ruling on the pending petitions for reconsideration and their request for a revised definition of

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[2/] Other petitioners advance other distinct but compatible exclusion approaches. RVIA and NTEA request **NHTSA** to increase the manufacturing threshold from 500 vehicles per year to 5,000 per year.

"large trailer manufacturer." This amounts to a theoretical delay of up to nine months, but as a practical matter is more likely to be a delay of only two quarters, six months.[3]

Given the strong likelihood that NHTSA must substantially revise its criterion for separating large and small trailer manufacturers before the first quarter of 2003 and that, as a result, a significant segment of the small-to-medium size trailer manufacturing industry will be reclassified as "small manufacturers" by the end of this year or the early part of 2003, it makes no sense from a regulatory or economic perspective to leave this distinct industry segment in limbo until NHTSA is able to publish its revised definition of "large manufacturer." The undisputed evidence in the record on reconsideration, gleaned from a wide variety of industry sources, supports the necessity for this revision. The concessions NHTSA makes in its recent filing with OMB in compliance with the Paperwork Reduction Act support the necessity for this revision. NHTSA staff has given industry informal, but unmistakably encouraging, indications that some revision in the size criterion will have to occur. Given this probable scenario, there is no valid reason to force trailer manufacturers to choose the crippling alternative, immediately incurring -- unnecessarily for many, if not for most -- approximately $227,000 each in start-up costs.

The small-to-medium trailer industry has made a good faith effort to participate constructively in this rulemaking proceeding and to learn from NHTSA what will be required when and if it must furnish NHTSA the large-manufacturer EWR data. It is an industry segment that SBA classifies as comprised primarily of small businesses -- 96 percent of these "large-manufacturer'' trailer producers are small businesses because their company workforce has 500 or fewer employees. This industry segment has been particularly hard hit by the downturn in the economy and the decline in consumer spending for non-essential goods. The vast majority of

[3] If **NHTSA** issues its decision before the end of this year, the first quarter when any remaining large trailer manufacturers would have to comply would be the fourth quarter of 2003.

these small businesses lacks $227,000 in cash reserves or borrowing power to fund start-up programs for EWR rule compliance. The probability for most that NHTSA will eventually exclude them by definition from the large-manufacturer reporting burdens underscores the absurdity of compelling any such expenditure until NHTA issues its decision on the pending petitions challenging the final rule's size standard.

A six-to-nine-month delay will give any remaining small-to-medium size trailer industry members ultimately classified as "large manufacturers" sufficient time to raise the capital necessary to comply and to implement the initial changes in their data collection systems. On the other hand, asking NHTSA to forego, for six to nine months, the receipt of EWR's accident-claims-complaints data from the 26,000 lbs.-and-under GVWR trailer manufacturers ultimately classified as "large manufacturers" will not deprive NHTSA of any trend-forecasting information necessary to carrying out the mission Congress has fixed for NHTSA in the TREAD Act.

Respectfully submitted,

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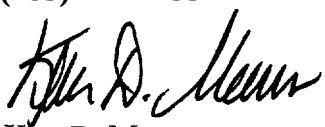

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November 22, 2002